

II. Claim amendments and new claim 21

Independent claims 10, 17 and 20 are amended in accordance with the Examiner's recitation of a method for treating fibromyalgia that is enabled by the instant application (Office Action, p. 2). All of the instant claims now recite "...wherein the first and second locations are within a same dermatome...".

New claim 21 is directed to a particular embodiment of the instant application and does not raise any additional issues or new matter. New claim 21 recites a method of treating fibromyalgia utilizing botulinum toxin type A, wherein the first and second locations are within a same dermatome, in accordance with the Examiner's alleged scope of enablement provided by the specification.

III. Rejection of claims 10-12 and 14-20 under 35 U.S.C. 112, first paragraph

The Office Action rejected claims 10-12 and 14-20 under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method of treating fibromyalgia, the method comprising subcutaneous or intramuscular administering a botulinum toxin to a patient with fibromyalgia, the botulinum toxin being administered at a first location, which is anatomically distinct from and/or anatomically distant from a second location at which second location the patient has fibromyalgia pain, wherein the first location and the second location are within a same dermatome, does not reasonably provide enablement for a method of treating fibromyalgia, the method comprising subcutaneous or intramuscular administering a botulinum toxin to a patient with fibromyalgia, the botulinum toxin being administered at a first location, which is anatomically distinct from and/or anatomically distant from a second location at which second location the patient has fibromyalgia pain, where the first location is not identified. Applicant respectfully traverses the rejection.

However and solely to further prosecution, and without conceding with the correctness or accuracy of this rejection and Wands factors analysis, independent claims 1, 17 and 20 have been amended to recite the method for treating fibromyalgia that the Office Action (page 2) has indicated as being enabled by the instant specification, and are thus in condition for allowance. All of the instant dependent claims, accordingly, include this limitation and are also enabled and in condition for allowance.

Thus, the rejection should be withdrawn.

III. Rejection of claims 10-12 and 14-20 under 35 U.S.C. 112, second paragraph

The Office Action maintains its rejection of claims 10-12 and 14-20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Applicant traverses this rejection.

All of the instant claims have been amended to recite the limitation "... wherein the first location and the second location are within a same dermatome...", in accordance with the scope of enablement of the specification, as defined by the Office Action (page 2 of the Office Action) and thus define the areas of the first and second locations.

Thus, the rejection should be withdrawn.